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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1462

MARK WHITE, et al., *Appellants*

vs.

DIANA REGESTER, et al., *Appellees.*

On Appeal from the United States District Court for the Western District of Texas

BRIEF OF APPELLEES REGESTER, ET AL., MORENO, ET AL., CHAPMAN, ET AL., WRIGHT, ET AL. AND WARREN, ET AL.

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FRANK A. ESCALANTE, et al., *Appellees.*

MARK WHITE, et al., *Appellants,*

vs.

JAMES GASKIN, et al., *Appellees.*

On Appeal from the United States District Court for the Western District of Texas

BRIEF OF APPELLEES REGESTER, ET AL., MORENO, ET AL., CHAPMAN, ET AL., WRIGHT, ET AL. AND WARREN, ET AL.

OPINIONS

The opinion of the District Court in the first round of this litigation is reported at 343 F. Supp. 704. The Opinion of Mr. Justice Powell denying Appellants' request for a stay of the initial judgment is reported with an opinion *sub nom. Graves v. Barnes,* at 405 U.S. 1201. The Court's previous opinion in this case is reported at 412 U.S. 755.[1] The opinion of the District Court, from which the instant appeal lies, is not reported; it is reprinted in the Appendix to the Jurisdictional Statement. (A. Jur. S. 1A-71A.)[2] The dissenting opinion of Judge Wood is reprinted at A. Jur. S. 72A-132A. Justice Powell's Order of February 2, 1974 staying the judgment presently under appeal is reprinted at A. Jur. S. 172C-173C. The Court's denial of Appellees' Motion to Vacate the stay is reprinted at A. Jur. S. 174D-175D.

JURISDICTION

The judgment of the District Court was entered on January 28, 1974. (A. Jur. S. 1A-132A.) Appellants contend that jurisdiction in this Court exists under 28 U.S.C. §§1253 and 2101(b). For the reasons set forth in Point III hereof, the Appellees submit that this appeal is not within the jurisdiction of the Court.

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[1]The original opinions of District Court and of this Court are not reprinted in either the Appendix to the Jurisdictional Statement or the Appendix.

[2]"A. Jur. S." refers to the separately bound Appendix to the Jurisdictional Statement; "App." refers to the separately bound Appendix filed herein; "App. Br." refers to the Appellants' brief on the merits.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The First and Fourteenth Amendments to the Constitution of the United States are involved in this case; as are Article III, §§26 and 28 of the Constitution of the State of Texas which provide for the times and methods of reapportioning the State legislative districts;[3] the State Apportionment Plan, Representative Districts (A. Jur. S. 133B-147B); and 28 U.S.C. §1253.

QUESTIONS PRESENTED

1. Whether the evidence before the District Court sustains its finding that each of the multi-member legislative districts in question operates to deny the plaintiffs equal participation in the electoral process in violation of the First and Fourteenth Amendments and this Court's controlling decision in *White v. Regester,* 412 U.S. 755 (1973).

2. Whether the District Court abused its discretion by ordering the implementation of single-member legislative apportionment plans in each of the legislative districts involved.

3. Whether the Court has jurisdiction over this appeal under 28 U.S.C. §1253.

STATEMENT

Consideration of the matter before the Court will occasion the seventh judicial determination of the

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[3]The text of the provisions in the Texas Constitution is reprinted in Appendix "A" to this Brief.

apportionment of the Texas State House of Representatives based upon the 1970 census.[4] The current appeal is from a decision of a three-judge district court, on remand from this Court,[5] that the use of multi-member legislative districts in eight of Texas' largest urban counties unconstitutionally cancels out or minimizes the voting strength of Mexican Americans[6] and Negroes living in those counties.[7] These schemes of reapportionment were *not* the product of the Texas Legislature but rather of a special board which acted under extreme self-inflicted time pressures.

1. Events Leading Up to Litigation

Article III, Section 28, of the Texas Constitution, (Appendix "A", *infra* at i-iii), provides that the Texas Legislature shall, at its first regular session after each decennial census, reapportion the state into Senate

[4]These cases include one previous decision of this Court, *White v. Regester*, 412 U.S. 755 (1973); two decisions by the Texas Supreme Court, *Smith v. Craddick*, 471 S.W.2d 375 (Tex. Sup. 1971) and *Mauzy v. Legislative Redistricting Board*, 471 S.W.2d 570 (Tex. Sup. 1971); two decisions by a three-judge district court, *Graves v. Barnes*, 343 F. Supp. 704 (W.D. Tex. 1972) *aff'd as to multi-member district sub nom White v. Regester*, 412 U.S. 755 (1973) and *White v. Regester* (on remand) ..... F. Supp. ..... (W.D. Tex. 1973) (A. Jur. S. 1A-131A).

[5]412 U.S. 755, 770; App. Br. 6.

[6]In its opinions, the Trial Court used the terms "Brown", "Mexican American" and "Chicano" interchangeably. The term "Chicano" is a shortened version or corruption of the term "Mexicano" which has often been applied to the Mexican American in the Southwest. The term "Anglo" is generally used in the Southwest to denominate whites or Caucasians.

[7]The counties are Tarrant (Fort Worth); El Paso; Travis (Austin); Jefferson (Beaumont-Port Arthur); Lubbock; McLennan (Waco); and Nueces (Corpus Christi). The multi-member district in the eighth county, Galveston, was held to result from an unconstitutional gerrymander.

and House districts. Should the Legislature fail to take such action, this provision establishes a special Legislative Redistricting Board composed of five elected officials to do the job.[8] The Board is required to meet within ninety days after the failure of the Legislature to reapportion and must apportion the state within sixty days after its first meeting.

The Sixty-second session of the Texas Legislature, which had convened in January of 1971, thus was under state constitutional mandate to reapportion both its Senate and House election districts. *Graves v. Barnes,* 343 F.Supp. 704, 711 (W.D. Tex. 1972). When it adjourned on May 13, 1971, it had adopted an apportionment of the State House, but had made no attempt to reapportion the Senate. *Id.* It was thus apparent, at least by the middle of May, that action by the Legislative Redistricting Board would be necessary.

The Board's first meeting was on August 24, 1971, which was the 85th of the 90 days allowed by the Texas Constitution for it to convene. *Mauzy v. Legislative Redistricting Board,* 471 S.W.2d 570, 572 (Tex. Sup. 1971). By the time the Board met for the first time, the scheme for apportionment of the House, adopted by the Legislature, had been declared unconstitutional under Article III, §26, Tex. Const., by

[8]The officials comprising this Board are the Lieutenant Governor, the Speaker of the State House of Representatives, the Attorney General, the Comptroller of Public Accounts, and the Commissioner of the General Land Office. Art. III, §28 Tex. Const.

a state district court.[9] This decision was affirmed three weeks later, on September 16, 1971, by the Texas Supreme Court. *Smith v. Craddick,* 471 S.W.2d 375 (Tex. Sup. 1971).

The Legislature Redistricting Board was asked to reapportion the House but it declined, asserting the fiction that its authority would arise only if the Legislature had failed to adopt any apportionment plan. Since the Legislature had adopted a plan, albeit an unconstitutional one, the Board refused to prepare a plan. To resolve this impasse, an extraordinary mandamus action was brought in the original jurisdiction of the Texas Supreme Court. That Court held that the Board clearly had jurisdiction to reapportion the House noting that "[a]n apportionment, which is invalid, for whatever reason is no apportionment." *Mauzy v. Legislative Redistricting Board,* 471 S.W.2d 570 (Tex. Sup. 1971). In issuing its mandamus directing the Board to act, the Texas Supreme Court was careful to admonish the Board that:

> In exercising its discretion as to whether to create multi-member districts within a single county, we must assume that the Board will give careful consideration to the question of whether or not the creation of any particular multi-member district would result in discrimination by minimizing the voting strength of any political or racial elements of the voting population.

471 S.W. at 575.

[9]For a commentary by a well-known Texas political analyst on this case, see BANKS, MONEY, MARBLES AND CHALK, pp. 240-242 (1971). Library of Congress Catalogue Card No. 70-180195.

2. Actions of the Board

The District Court has noted that the Board acted with a "considerable lack of rational direction. . . ." *Graves v. Barnes,* 343 F.Supp. 704, 716 (W.D. Tex. 1972). They conducted hearings four times and on only two of these occasions was the entire Board present. *Id.* One member testified that he did not pay much attention to the matters discussed. *Id.*[10] The full Board did not even meet to approve the House apportionment plan; it was merely passed around from office to office. *Id.* Probably most surprisingly, in light of the very specific warning of the Texas Supreme Court to give careful consideration to the unconstitutional effect which multi-member districts might have on "racial elements of the voting population", *Mauzy v. Legislative Redistricting Board,* 471 S.W.2d 570, 575 (Tex. Sup. 1971), at no point in its deliberation did the Board even debate or discuss the general issue of single member versus multi-member districts.

The Board treated the apportionment plan that had been adopted by the Legislature as a complete "nullity" (Wright Ex. 4, 1583-1585),[11] choosing to begin from "scratch" (*Id.* 2243). One member, Armstrong, sum-

[10]Board member Clavert deemed the testimony heard by the Board to be "all this crap." (Wright Ex. 4, 2019.)

[11]All of the plaintiffs' exhibits were marked prior to trial and introduced at one time. (App. 217-233.) They were identified by the name of plaintiff or intervenor offering the exhibit and by number. Thus citations in this brief to plaintiffs' exhibits will follow that pattern, *e.g.,* Wright Ex. 4. Since they were all introduced at the same place in the record we will dispense with record citations every time an exhibit is relied upon.

marized the Board's attitude by saying that the members were afflicted with an "apparent inability to all get together and do something in concert." (Wright Ex. 4, 1770.) As a result, it was the staff, with few if any instructions or guidelines, that produced the plan which was ultimately adopted. (Wright Ex. 4, 1595-96, 1772-75, 2014, 2149-52.) The principal staff functionaries were Robert Johnson, Executive Director of the Texas Legislative Council, and Robert Spellings of Board member Barnes' staff. According to Johnson, he received no instructions from the Board regarding whether to use multi-member or single member districts in the urban counties (Wright Ex. 4, 1881-82); was not instructed to consider the impact of the districting scheme upon minority groups (*Id.* 1892-93); and, as a result, he was simply "not concerned with the effect of the plan on racial or ethnic minorities." (*Id.* 1899.)[12]

The Board's plan was prepared by staff member Spellings, relying on information furnished by Johnson. (Wright Ex. 4, 2247-49.) Spellings completed the house reapportionment in one night, beginning on a Tuesday at about 5 P.M. and ending the following Wednesday at 10:30 A.M. (Wright Ex. 4, 2244.)[13] The corrections and checking were completed only one hour

[12]Johnson's testimony is dispositive of the consideration given the warning issued by the Texas Supreme Court:

> Q. Yes, but to what extent did you consider the minority groups in drafting the plan?
>
> A. I didn't consider them top side or bottom. (Wright Ex. 4, 1904.)

[13]This was on Wednesday, October 20, 1971, and the plan was signed on Friday, October 22, 1971. (A. Jur. S. 146B-147B.)

and one half before the Board met on Friday, October 22, 1974, and adopted the plan. (Wright Ex. 4, 2550-51.)

3. Graves v. Barnes

Within days after the plan of apportionment was adopted by the Board, four suits were filed attacking the entire plan on the grounds of deviation and specifically alleging that the use of multi-member districts for all of the State's urban areas, except Harris County (Houston)[14], was unconstitutional. (Wright Ex. 4, 1-56.)[15] A three-judge court was convened and the cases were consolidated for trial. Because of the time problems posed by the State's February candidate filing deadline, it was stipulated by all parties in open court that, in addition to the cause of action on deviation, proof on the multi-member district causes of action would be presented only as to the Bexar and Dallas County multi-member districts. *Graves v. Barnes, supra,* 343 F.Supp. at 718.[16] Approximately

[14]The plan adopted by the board had used single member districts for Harris County. *Graves v. Barnes,* 343 F.Supp. 704, 718 (W.D. Tex. 1972).

[15]Certain of these suits likewise contained attacks on the Board's Senate plan, *Graves v. Barnes,* 343 F.Supp. 704, 708-710 (W.D. Tex. 1972).

[16]After an announcement by the plaintiffs at a pretrial hearing held December 22, 1971, that they would offer testimony only as to Dallas and Bexar Counties because of the time problem, the attorney general representing the State observed:

> This is my personal view entirely, but I would think that the Plaintiffs' case can either be made or not be made in two or three of the major metropolitan areas, and I would anticipate, at least, that if the multi-member districting were knocked out, say in Dallas and Tarrant County and Bexar County, that probably it would not be used elsewhere either, so that I have some difficulty personally in seeing the necessity of trying these issues as to eleven different metropolitan areas.

Graves v. Barnes, supra, 343 F.Supp. at 719.

one thousand pages of deposition testimony was taken and a voluminous documentary record was compiled. The trial of the case consumed three and one half days and a transcript of in excess of 1,000 pages. (Wright Ex. 4.)

On January 28, 1972, the District Court issued its opinion finding the entire statewide plan impermissible on the grounds of deviation and specifically holding that the multi-member districts in Bexar and Dallas counties operated to deprive Mexican Americans and Negroes of an equal opportunity to participate in the political process by diluting their votes. *Graves v. Barnes, supra,* 343 F.Supp. at 735.[17] The Court thereupon adopted single-member district plans to be immediately effective for both the Dallas and Bexar County multi-member districts. *Id.* at 737.

4. White v. Regester

On appeal, this Court reversed the finding that the entire statewide plan was impermissible on the grounds of deviation but affirmed the holding of the District Court that the Dallas and Bexar County multi-member districts unconstitutionally affected Mexican American and Negro political participation. The case then was remanded, *sub nom. White v. Regester,* 412 U.S. 755, 770 (1973).

5. On Remand

Upon motion of the original plaintiffs, made shortly after this Court's decision in *White,* the same three-

[17]The challenges brought against the Board's Senate plan were not sustained, *Graves v. Barnes, supra,* 343 F.Supp. at 734-735.

judge court to which the Supreme Court had remanded the case was reconvened to hear the challenges brought by the plaintiffs to the State's remaining multi-member districts. The trial was held on December 3, 4, and 5, 1973. In its decision announced on January 10, 1974, the District Court found that the multi-member legislative districts in Tarrant, El Paso, Travis, Jefferson, Lubbock, McLennan and Nueces Counties operated to deny Mexican American and Negro voters in these counties an equal opportunity to participate in the political process. The Galveston County multi-member district was held to be the result of an unconstitutional gerrymander which divided the Negro community in such a manner as effectively to emasculate them. Relief was denied as to the Hidalgo County multi-member district, because the Court found that votes for minority group members were not unconstitutionally diluted in this county.

The District Court concluded that the immediate implementation of single-member legislative apportionment plans was necessary in order to grant Appellees meaningful relief. (A. Jur. S. 61A-71A.) The Court refused, however, to grant immediate relief in Galveston County; allowing the Legislature until July 1, 1975, to remedy the constitutional defect.

The Court directed that the plaintiffs file proposed plans of single-member apportionment for each of the unconstitutional multi-member districts by January 11, 1974, and the State was ordered to do so by January 18, 1974. Plaintiffs tendered proposed plans for all districts by January 11; however, the State failed

to file any plans by this deadline. A hearing on the adoption of proposed plans was held on January 28, 1974. At that hearing, Texas offered plans for five of the seven districts found to violate the principles of *White v. Regester*. In two, Nueces and McLennan Counties, the State adopted plans previously submitted by the plaintiffs. In two others, Lubbock and Jefferson Counties, Texas' plans would have required a substantial redistricting of the surrounding single-member districts.[18] The State offered no plans for Travis and El Paso Counties.

The State applied for and was granted a stay of the implementation of the District Court's judgment by Justice Powell on February 2, 1974. (A. Jur. S. 172C.) A Motion to Vacate was denied by the Court, Justice Douglas dissenting, on February 7, 1974. (A. Jur. S. 174D.)

The evidence relied upon by the District Court for its Findings and Order, is set forth and discussed, as to each of the counties involved, in Point I of the argument, *infra,* at 19-41.

SUMMARY OF ARGUMENT

In *White v. Regester,* 412 U.S. 755 (1973), this Court affirmed the finding of a three-judge district court that the multi-member state legislative districts in two urban Texas counties, Dallas and Bexar (San Antonio), operated to deny Mexican Americans and

[18]Each of the plans submitted by the plaintiffs required a simple division of the existing multi-member districts into single-member districts and had no so called domino effect.

Negroes an equal opportunity to participate in the political process. The present case is on appeal from a decision by the same three-judge court, on remand from this Court, that multi-member districts in seven other Texas urban counties work the identical unconstitutional effect on the same minority groups. The apportionment in an eighth county was found to constitute an overt racial gerrymander. In both cases, careful attention was paid to the fact that Texas is a one party state with an historical pattern of racial discrimination that has repressed minority political and economic participation. This minority isolation is magnified, in the case of Mexican Americans, by the cultural and language barriers which have been fostered by insufficient and unconstitutionally discriminatory educational opportunity. As this Court noted in the first round of these proceedings, this historic picture has imprinted a pattern of political apathy that continues to this very day.

But even the logistics of the current electoral system retain elements which, while not in themselves unconstitutional, certainly facilitate a continuation of the exclusionary pattern. Texas law requires that a candidate receive a majority of the votes cast for nomination. Additionally, the State utilizes the so-called "place system" which requires that a candidate for nomination run for a specific place on the ballot. As the District Court noted: "Since there is no matching provision that these places correspond to particular sections of the county in which the candidate must reside, the rule serves no function but

to reduce the election to a series of head to head contests with a consequent emphasis on the racial element when it appears." (A. Jur. S. 7A.)

The District Court applied this background of Texas law to the evidence presented as to each county. The opinion of that Court attests to a careful consideration of the thirty-nine witnesses (twenty-two in person and seventeen more by deposition) and the almost three hundred exhibits totaling over five thousand pages (including detailed analysis of statistical and electoral data for each multi-member district) presented during the three day trial. These findings are correct and should be affirmed.

The District Court did not abuse its discretion when it adopted plans of single member apportionment to replace those found to be constitutionally impermissible. Single member districts are an appropriate remedy for unconstitutional multi-member districts. *Connor v. Johnson,* 402 U.S. 690 (1971). The plans were drawn so as to do a minimum of violence to the existing scheme of apportionment. *White v. Weiser,* 412 U.S. 783 (1973).

The injunctive relief requested by the plaintiffs concerned only eight of the State's 254 counties. Jurisdiction in this Court under 28 U.S.C. §1253 therefore does not exist. Only an injunction having statewide impact suffices to support jurisdiction in a direct appeal. *Gunn v. University Committee,* 399 U.S. 383 (1970); *Board of Regents v. New Left Education Project,* 404 U.S. 541 (1972).

The appeal of the State should be dismissed because they failed to docket the appeal within the time period allowed by this Court's rule 39. *Shapiro v. Doe,* 396 U.S. 488 (1970); *Snider v. Allstate,* ..... U.S. ....., 94 S.Ct. 771 (1974).

ARGUMENT

I. THE USE OF THE MULTI-MEMBER STATE LEGISLATIVE DISTRICTS IN THE TEXAS MAJOR URBAN AREAS AT ISSUE HERE OPERATES TO DENY MEXICAN AMERICANS AND NEGROES EQUAL ACCESS TO THE POLITICAL PROCESS.

This Court has made it clear that multi-member districts are not constitutionaliy permissible in all situations. They fail to pass muster when they operate "*designedly or otherwise* . . . to minimize or cancel out the voting strength or racial or political elements of the voting population," *Fortson v. Dorsey,* 379 U.S. 433, 439 (1965) (emphasis added); *Burns v. Richardson,* 384 U.S. 73 (1966), *i.e.,* when "the political processes leading to nomination and election [are] not equally open to participation by the group in question . . ." *White v. Regester,* 412 U.S. 755 (1973).[19]

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[19]The dissenting opinion in District Court below relies on *Keyes v. Denver Ind. School District,* 413 U.S. 189 (1973) for the position that the plaintiffs must demonstrate that a multi-member district was "designed" to dilute the vote of minority groups before they could be successful. (App.J.S.81A.) The problems faced by a court when it delves into legislative intent have been identified and commented on in *Palmer v. Thompson,* 403 U.S. 217 (1971). This is clearly not one of the limited cases where intent is a proper subject for judicial inquiry. But even if it were, the failure of the Legislative Redistricting Board to heed the direct warnings of the Texas Supreme Court to consider carefully the use of multi-member

The tendency of multi-member districts to affect adversely the franchise of Mexican Americans and Negroes has often been noted by this Court and other courts. *White v. Regester, supra; Perkins v. Matthews,* 400 U.S. 379 (1971); *Allen v. State Board of Elections,* 393 U.S. 544 (1969); *Connor v. Johnson,* 330 F.Supp. 506 (S.D. Miss. 1971), *remanded and stay granted,* 402 U.S. 690 (1971), *suppl. order entered,* 330 F.Supp. 521 (S.D. Miss. 1971), *vacated and remanded sub nom. Connor v. Williams,* 409 U.S. 549 (1972); *Zimmer v. McKeithen,* 485 F.2d 1297 (5th Cir. 1973 *en banc*); *Turner v. McKeithen,* 490 F.2d 191 (5th Cir. 1973); *Sims v. Baggett,* 247 F.Supp. 96 (M.D. Ala. 1965). The multi-member district likewise has been subject to severe criticism in Congress, see *Perkins v. Matthews,* 400 U.S. 379, 399 (1971), as well as by governmental commissions, see *Report of the National Advisory Commission on Civil Disorders* (1968) at 296; U.S. Commission on Civil Rights, *Toward Quality Education for Mexican Americans* Report VI: Mexican American Education Study (Feb. 1970) at 14, n. 81. There seems now to be little question that the existence of a multi-member district may well "dilute the normal political impact" of minority groups. *Report of the National Advisory Commission on Civil Disorders, supra* at 296.

districts should amount to a degree of negligence equal to intent. One cannot avoid constitutional challenge on the ground that the effect of an act was never considered. *Cf. Palmer v. Thompson,* 403 U.S. 217, 225 (1971). Further, the Court's decision in *Monroe v. Pape,* 365 U.S. 167, 187 (1961) establishes that in 42 U.S.C. § 1983 actions, "intent" is to "be read against the background of tort liability that makes a man responsible for the natural consequences of his actions." The result in *Keyes* certainly demonstrates that this rule still controls. And the evidence sustains the District Court's decision under this rule.

Finally, if the dissent's reliance on *Keyes* is proper, since plaintiffs had proven that plans providing for multi-member district apportionment in two urban Texas counties (Dallas and Bexar) were unconstitutional, the burden should have shifted to the State to offer an explanation of why the remaining urban multi-member districts are not equally unconstitutional. *Keyes, supra,* 413 U.S. at 205-214. This the State has not done.

Certain factual matters were established in the first round of proceedings in the instant case. See *White v. Regester,* 412 U.S. 755 (1973). They thus have become the law of the case upon remand.

First, this Court noted "the history of official racial discrimination in Texas, which at times touched the right of Negroes to register and vote and to participate in the democratic process." *White v. Regester,* 412 U.S. at 766. The Court also observed that "Mexican-Americans in Texas, had long suffered from and continue to suffer from, the results and effects of invidious discrimination and treatment in the fields of education, employment, economics, health, politics and others" (*Id.* at 768); and that throughout the state, Mexican Americans typically face "a cultural and language barrier that makes . . . participation in community processes extremely difficult . . ." (*id.*); and that "cultural incompatibility . . . conjoined with the most restrictive voter registration procedures in the nation have operated to deny Mexican-Americans access to the political processes in Texas even longer than the Blacks were formally denied access by the white primary." (*Id.*)

In the light of the findings of racism, the Court revie d the electoral logistics in Texas, especially

"the Texas rule requiring a majority vote as a prerequisite to nomination in a primary election and . . . the so-called 'place' rule limiting candidacy for legislative office from a multi-member district to a specific 'place' on the ticket, with the result being the election of representatives from the . . . multimember district reduced to a head-to-head contest for each position." *White v. Regester, supra,* 412 U.S. at 766. The Court concluded that, while "[t]hese characteristics of the Texas electoral system" are not "themselves improper or invidious" they certainly "enhanced the opportunity for racial discrimination." (*Id.*)

In its brief, the State concedes (App. Br. 22) that the confluence of Texas law and social climate render its minority population particularly vulnerable to the impermissible tendencies of a multi-member district to "facilitate minority exclusion." (A. Jur. S. 6A.) While "these state wide conditions are not alone sufficient to demonstrate the invidious effect of a multi-member district in any particular county" the District Court noted that "they do provide a continuing background for specific findings . . . in the challenged district." (A. Jur. S. 7A.)[20] We will now proceed to a discussion of the "specific findings" challenged by the defendants.

[20]In *Whitcomb v. Chavis,* 403 U.S. 124, 149-156 (1971) this Court considered the constitutionality of multi-member legislative districts in Indiana, a strong two party state with a progressive record on civil rights where the plurality-single shot system and *not* the majority place system was used for election. As the District Court noted in the first round of this case, these distinctions in law and social climate are basic to an understanding of how differently the multi-member districts operate in Indiana rather than in Texas. *Graves v. Barnes,* 343 F. Supp. 704, 724-734 (W.D. Tex. 1972), *aff'd as to multi-member dists sub nom. White v. Regester,* 412 U.S. 755 (1973).

Appellees are also aware of a case on direct appeal from the District Court of North Dakota which also concerns the question of multi-member districts. *Chapman v. Meir,* 372 F. Supp. 363 (D. N.D. 1974) *prob. juris. noted* ..... U.S. ....., 40 L.Ed.2d 556 (1974). Both the Texas and North Dakota cases are similar in that they each involve the propriety of court drawn plans of apportionment. But the similarity ends there. No contention was made in *Chapman* that the use of multi-member districts results in a deprivation of the rights of racial minority groups. The Indians, North Dakota's only substantial minority, are found primarily on various reservations all located in areas where single member districts were used. *Chapman, supra,* 372 F. Supp. at 375. North Dakota like Indiana has a healthy two party system. North Dakota has not had the history of electoral restrictions found in Texas. For example, North Dakota has no annual voter registration statute (N.D. Cent. Code 16-04-06) and seems never to have had a poll tax (N.D. Cent. Code 16-12-08). Further the election laws in North Dakota impose no restrictions on plurality or "single shot" voting.

In terms of size, there is also no comparison between North Dakota and Texas. The Tarrant County multi-member district alone, has more population than the entire state of North Dakota and the smallest of Texas' multi-member districts (McLennan, population 147,533) is twenty four times larger than an ideal North Dakota single member district (6,056).

Jefferson County

The State's discussion of Jefferson County is characterized throughout by minimal references to the record, and conclusionary assertions which find no support in the record. (App. Br. 29-31.)

As found by the Trial Court, "No Black man or woman from any part of the district, has been elected to a district or county wide office since the turn of the century." (A. Jur. S. 19A.) Indeed, no Black person has ever been the Democratic Party nominee for any public office in this one-party county. (App. 1656-57, 1779-80.) This failure is certainly attributable in part to the "strong racial hostility as far as

voting for a Black candidate" (App. 1668), and also to the fact that Blacks have been unsuccessful in their attempts "to function through the Democratic Party . . ." (App. 1690). It is little wonder, that Dr. Cotrell, plaintiffs' expert witness who had also testified in the original trial in these proceedings, concluded that the condition of Blacks in Jefferson County was "worse," as far as legislative participation is concerned, than it had been for Dallas Blacks in 1971. (App. 637-38.)

The State argues (App. Br. 30), again without benefit of a record reference, that plaintiffs' counsel admitted "that discrimination in Jefferson County would not have been changed by single-member districts." No such admission was in fact made; to the contrary, it has always been plaintiffs' contention that the continuing legacy of racial discrimination in Jefferson County in public facilities, schools, employment, unions, housing and the very life of the county had a dramatic deliterious impact upon the opportunity for the Black minority to participate meaningfully in the electoral processes. For example, following the passage of the 1964 Civil Rights Acts, as Blacks sought to eliminate segregated unions and racially separate lines of seniority, new hostilities were generated among white workers. (App. 1740.) The fear that "Black people may get someone's job" (App. 633) explains in large measure, for example, the utter inability of Black legislative candidate Price to obtain any support in the white labor dominated precincts of Jefferson County. (App. 631, 1661-64.) This inability to secure the support of union leader-

ship and membership historically has proven fatal in counties such as Jefferson in which the Labor vote has long been the dominant force. (App. 1672.) The record provides overwhelming support for the Trial Court conclusion that "minority access to the nomination and election of state representatives . . . comes not at all in Jefferson County." (A. Jur. S. 23A.)

Travis County

Again as to Travis County the State places principal reliance on matters not of record. (App. Br. 35-40.) These efforts may be attributable in part to the fact that the State's only witness with respect to Travis County fully confirmed the invidious impact of the multi-member legislative district. The State's sole witness was Frank Wright, who confirmed earlier testimony that the "black community of Austin had little or no role to play in the legislative politics in Travis County . . . in determining who was going to run for office and who was going to be elected to office and having a significant input in terms of once elected what those office holders would do. . . ." (App. 718.) He further confirmed that Gonzalo Barrientos, a Chicano, had been defeated in a county-wide legislative race in 1972 by the "racist campaign tactics" of his opponent, a long-time incumbent legislator. (App. 716-7.)

Travis County, as suggested by the State's brief (App. Br. 35), is dominated by the City of Austin. Some measure of the difficulty in dealing with the legacy of racism in Austin is reflected in the testimony concerning the 1969 City Council elections. In

1968 the Austin City Council, by a narrow vote, adopted a fair housing ordinance which was to apply to rental property. The immediate response of the Austin voters was a referendum petition which resulted in a repeal of the ordinance; and in the spring of 1969 the three council members who had supported the fair housing ordinance were defeated for re-election for reasons attributable to their support of that ordinance. (App. 268-9.)

Charles Miles, a Black resident of the county, stated that the isolation of the Black community was such that the "white community is not aware and is not conscious of the real leadership that exists in the black community," and that the people "who really have the most influence with the black people of the black community are many times not even known by the white community, even the white leadership." (App. 321.) And, in fact,

> usually the first time much of the black leadership—I think most of them would agree that the first time they hear about decisions being made, I guess, in a smoke-filled room, is many times from black waiters who work in clubs, who are usually pretty well-educated people. People just talk around them freely, and many times that's the first time we hear about who let's say the Democratic party intends to push for the Legislature, push for a judgeship and things like that, so we really don't have beyond voting and beyond politicians coming and asking blacks to help push, to campaign for them, we really don't have much of a role.

(App. 323-24.)

The political ineffectiveness of the Black community is exacerbated by the size of the district and the high cost of running for office (App. 257-58) and the lack of communication between the Black and white communities (App. 319-21). The evidence in the record amply confirms Dr. Cotrell's conclusion that the "multi-member district in Travis County tends to subvert and submerge and permanently cancel out the voting strength of minorities" in the County. (App. 641.)

McLennan County

The State offered a single witness from McLennan County, former Representative Tom Moore. He appraised the situation of the Black community of McLennan County as follows:

> I think the blacks have just become so discouraged. It doesn't make any difference who runs, they feel they are not going to get much out of it one way or the other, so they just quit voting.

(App. 1574-75.)

Tom Moore further described the status of the Blacks of McLennan County:

> Well, for instance, back in fifty—what—54, we had a Supreme Court decision that would end segregation and twenty years later nothing much had happened, for instance, and this sort of thing. It has been an awfully slow process or really lack of progress for the blacks, as they see it, and really, I'm inclined to agree.

(App. 1576.)

No Blacks in McLennan County have ever been nominated in the Democratic primary for any office. (App. 1519.) Robert Gilbert characterized the relationship between the Blacks in McLennan County and the Democratic primary as follows:

> I don't think any black has ever thought there was any hope for ever getting elected in the Democratic Primary. There hasn't been that kind of participation. There hasn't been that kind of feeling on the part of the blacks that they were even welcome in that type of participation.

(App. 1519.)

It was Tom Moore's view that no Blacks could be elected to the Legislature from McLennan County because "our people have not reached that degree of sophistication in this county. . . ." (App. 1585.)

This unanimous view with respect to McLennan County amply confirms Dr. Cotrell's conclusion that the multi-member district "has an extremely adverse effect and continues to reinforce what I described earlier as traditional and quiescent participation rate, a quiescent and traditional political outlook." (App. 638.)

Nueces County

Probably the most striking statistic presented to the District Court in the Nueces County portion of this case revealed that although Mexican Americans account for over 40% of the population, since Reconstruction only two have been elected to the state legislature from this county. (App. 611.) Indeed since 1886, only five Chicanos (including the two legislators) have ever been elected to a county-wide post. (App. 611, 760-61.)

When asked to offer some explanation for this minimal impact of Mexican Americans on the political life of Nueces County, the State's own witness, a former State Representative and current county democratic chairman, explained:

> . . . [M]exican-Americans have been discriminated against economically and you know that. This has kept them from participating. The Mexican-American has been suppressed and held down economically and that is a fact. . . .

(App. 1497.)

The only other witness offered by the State for this portion of the case, State Representative DeWitt Hale, took a slightly different tact:

> I think it's the result of housing pattern discrimination, of educational lack of opportunity. . . . It's not necessarily discrimination that's doing that. It's the educational process and the entire background.

(App. 761.)[21]

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[21] In the first round of this case, when this Court considered the Bexar County (San Antonio) multi-member state legislative district, it was noted that such past discrimination, especially in the areas of economics, politics and education make it substantially more difficult for Mexican Americans to compete for election in a multi-member district. Such a situation, this Court stated "effectively operated to deny Mexican-Americans access to the political process in Texas. . . ." *White v. Regester*, 412 U.S. at 768 (1973). As noted by this Court, and confirmed by the State's only witnesses in the instant proceedings, such discrimination cannot help but compromise a minority group candidate who is required to run at large.

On appeal, in an attempt to impeach their only witnesses, the State argues that Mexican Americans in Nueces County have had an "impressive record of minority participation and success in the political arena." (App. Br. 49.) To support this position, they cite elections of minority group members in 1971 to the Corpus Christi City Council. (*Id.*) They neglect to add, however, that city council members are required to reside in specific geographic subdistricts and that those elections are dominated by an Anglo controlled slating group. (App. 1500.) The State also points to the election of three Mexican American justices of the peace, one Mexican American constable and one Mexican American county commissioner. (App. Br. 49.) In Texas, however, each of these local officials is elected from a specifically defined geographic district, in which only the residents of the district may vote, i.e., a single member district. The State's argument thus proves plaintiffs' case. When the multi-member districts or at-large election requirements are eliminated, Mexican Americans are elected in substantial numbers.

Factually the Trial Court noted that Mexican Americans are substantially confined to an area known as "the corridor", where economic, social and educational conditions are far more severe than were those of Bexar County Mexican Americans, as noted by this Court in *White v. Regester*, 412 U.S. 755, 768 (1973). (A. Jur. S. 44A-46A.)[22] The segregated housing pat-

[22]While that area contains 40.43% of the county's housing units it includes almost 82% of the county's units lacking some or all

terns, described by the State's witness were so pervasive and continuous that the record indicates that Dr. Hector Garcia, a member of the United States Commission on Civil Rights and an alternate delegate to the United Nations with the rank of ambassador, was required to go through a straw man to buy real property in Corpus Christi. (App. 2110-11.) For further documentation of the pattern of housing discrimination, see App. 2098-2101.

As the District Court found, until recently school board members were elected under a plurality system which permitted single-shot voting. (A. Jur. S. 49A.) Since the four year terms on the Board of Education were staggered, Mexican Americans were able to elect two of the board's seven members. (Four members are elected in one election year and three are elected in the next.)[23] As the District Court noted, shortly after

plumbing facilities. The average value of a home in the corridor is $4,200 less than the average value for a home in the county as a whole. The median family income for the county is almost $3,000 per year higher than in corridor areas. Educationally the conditions are equally as dreadful. The area contained almost 86% of Nueces County persons twenty-five years of age or older who have not completed even one year of education. Only 2.95% of the persons 25 years of age or older living in the corridor area are college graduates. In median school years completed, the county residents as a whole are almost four years ahead of the residents of the corridor area. Unemployment is almost twice as high in the corridor as in the rest of the county. While the corridor contained 38.91% of the employable males it experienced 51.59% of the county's unemployment. (Moreno Ex. 42.)

[23]When the first Mexican American to oppose an Anglo incumbent School Board member ran for election in 1952, the District Court noted that the hostility of the Anglo community was expressed as follows in a political brochure:

> Now and for many years past, our Latin American friends have had one of their own race on the school board—as is frankly agreed by all fair thinking people that they should

election of the second Mexican American, the School Board changed its method of election to the majority place system. (A. Jur. S. 49A.)

Racial appeals, too, have characterized elections in Nueces County. As the District Court also observed, as recently as 1971, the hostility of the Anglo community to bussing was used by the Concerned Neighbors, Inc.[24] as a racial ploy to support their candidates to the City Council, even though the City Council has no authority whatsoever in the area of pupil transportation. (A. Jur. S. 50A.) Dr. Cotrell, plaintiffs' expert witness, confirmed the use of racial appeals in the Nueces County political system as well as substantial polarization of the community, stemming from a recent school desegregation case, *Cisneros v. Corpus Christi I.S.D.*, 324 F.Supp. 599 (D. Tex. 1970), *aff'd in part, modified in part and remanded*, 467 F.2d 142 (5th Cir. 1972).[25] He also testi-

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have. However, this present Latin-American member still has two (2) years to serve on his current term and naturally it was thought that our Latin-American friends would make no attempt to put an additional member on the school board at this time—and certainly not for the specific purpose of attempting to defeat an experienced Anglo American member for a second term.

(A. Jur. S. 48A.)

[24]Concerned Neighbors was a group of people organized to oppose bussing. They attempted to intervene in the school case but were refused. They have since resorted to political action to subvert the effectiveness of the Court's orders in *Cisneros v. Corpus Christi I.S.D.*, 324 F. Supp. 599 (S.D.Tex. 1970), *aff'd in part, modified in part and remanded*, 467 F.2d 142 (5th Cir. 1972). (App. 1309; A. Jur. S. 50A.)

[25]All the witnesses agreed that the pupil transportation ordered in the *Cisneros* case had the effect of polarizing the community and increasing the existing tensions between the Anglo and the minority community. (App. 727, 1307-10, 1499.)

fied to the existence of patterns of racial voting almost identical to those he found in Bexar County in the first round of this case. (App. 608-615.)[26]

El Paso County

Mexican Americans account for slightly over half of the citizens of El Paso County.[27] (App. Br. 43.) While this is an apparent numerical majority, a review of the opinion of the District Court reveals that racism exacerbated by the multi-member election system, disables the group from effective political action. It was found that Mexican Americans constitute only 20 to 38% of the registered voters with a voter turnout rate in the range of only 35 to 50%. (A. Jur. S. 40A.) Registration in the Anglo precincts is in the range of 70% and voter turnout is over 65%. (App. 1262-1265, 1269-1270, 1274-1277.) This striking differential in registration and turnout was found to be "due largely to the lingering intimidation of Mexican Americans since repeal of the poll tax, . . . restrictive registration measures . . . the language barrier [presenting] obvious communication problems" and other "more subtle forms of demoralization." (A. Jur. S.

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[26]The State argues that the record "does not support racial hostility as a cause" of the well defined voting patterns identified by Dr. Cotrell. In support of this proposition they cite to the fact that Rep. Carlos Truan had "a public falling out with the Bishop of Corpus Christi in 1972." (App. Br. 52.) The defendants neglect to add that their witness testified that the so called falling out was due to Truan's activities "in support of the farm worker march," a cause closely identified with Mexican Americans in Texas. (App. 733-34.) "The Bishop was jumping all over Mr. Truan down there . . . [and] Carlos lost lots of votes as a result. . . ." (*Id.*)

[27]Negroes make up approximately 3% of the El Paso population. (A. Jur. S. 43.)

40A-41A.) For example, even after the federal courts struck the poll tax and the annual voter registration procedures, the Anglo controlled county government continued actively to limit Mexican American electoral participation. (*Id.*)

The majority of the county's Mexican Americans and Blacks reside in barrios where the social, economic and educational conditions are as depressing as those noted by this Court in the "west side" barrio of Bexar County. *White v. Regester,* 412 U.S. 755, 768 (1973).[28] Their children attend racially identifiable schools which have resulted from school board policies, optional zoning, pupil transportation and the like. (A. Jur. S. 39A.)

In the words of a past county democratic chairman, whenever a Mexican American offers himself as a candidate, he faces an "innate, inborn" racism (App. 1272), on the part of the El Paso Anglo community. As found by the District Court, this "racism" expres-

[28]Moreno Exhibit 40 defined two Barrio areas containing a total of 27 contiguous census tracts which included 158,051 persons. Expressed in other terms, the so called Barrio area contained 43.98% of the county population but almost two thirds of its Mexican American residents. The area was 86.05% minority. It contained 81.17% of the county population which had never attended school yet just over 15% of the county's college graduates. The average of the median school years completed for the Barrio area is 8.57 as opposed to 12.00 for the county as a whole.

Almost one quarter of the families living in the Barrio area had incomes at or below the poverty level. 17.38% of the housing units in the Barrio area were found to be lacking in plumbing facilities as opposed to only 2.38% in the balance of the county. The value of owner occupied housing was almost $3,000.00 lower in the Barrio than the average for the entire county.

ses itself in terms of "whisper campaigns"[29] (A. Jur. S. 41A), and as late as 1972 as overt "racially based" electioneering (A. Jur. S. 41A-42A). The State's own witnesses candidly admitted and the District Court found that a Mexican American candidate for mayor "was characterized as 'un-American' by his [Anglo] opponent because of his participation in Chicano organizations. . . ." (A. Jur. S. 42A.)

At trial, and again in their brief before this Court, the State attempted to make much of the minimal Mexican American electoral success in this county. (App. Br. 46.) To support their position, they rely on the election of Mexican Americans to positions such as justice of the peace, constable and county commissioner. (*Id.*) But, these are posts which are elected from specific, defined geographic areas—single member districts. Next, the State points to recent Chicano elections success in the El Paso City Council. *(Id.)* However, the undisputed record shows and the District Court found that city council elections are determined by a "strong and successful" Anglo dominated slating group which handpicks its minority candidates (A.

[29]As the present Republican County Chairman from El Paso put it:

> I use the word whisper because it doesn't come out in the newspapers or things like that. But the people of the community talk among themselves and they say that they are not going to vote for the Mexican-American candidates and it is borne out in the election results.

(App. 480.) As the Democratic County chairman added:

> . . . [T]here's a whisper-type of campaign. There are jokes made and other personal verification based on this kind of thing. There is no doubt that it is a substantial and heavy factor in this county in elections.

(App. 1273.)

Jur. S. 42A) in a fashion reminiscent of the procedure found to be utilized by the Dallas Committee for Responsible Government in the first round of this case. *White v. Regester,* 412 U.S. 755, 766-67 (1973). This type of electoral participation demonstrates only the "benevolence" of the Anglo controlled slating group and certainly not healthy minority political activity. See *Graves v. Barnes,* 343 F. Supp. 704, 726 (W.D. Tex. 1972), *aff'd as to multi-member districts sub-nom. White v. Regester,* 412 U.S. 755 (1973).

At the time of trial, no Mexican Americans were members of this county's legislative delegation, despite the numerical preponderance of Chicanos in the county's population, and, as found by the District Court, the fact that since Reconstruction only four El Paso Mexican Americans have ever served as state representatives. (A. Jur. S. 41A.) It is interesting to note that in Bexar County, at the time the first round of this case was tried, five Mexican Americans had been elected to the State House of Representatives since Reconstruction.[30] Further comparisons indicate that Mexican Americans had slightly higher voter turnout rates in Bexar County than in El Paso County and that, in terms of candidate recruitment, far more Bexar County Mexican Americans had offered themselves for election than had El Paso County Mexican Americans (22 as opposed to 9). (App. 596, 597, 599-602.) The list of other successful Mexican Ameri-

[30]Plaintiffs submit that this comparison is warranted because until 1968 both counties had delegations which were approximately the same size. For example in 1966 Bexar had seven representatives while El Paso had six.

can candidates for county-wide office in El Paso is not nearly as long as the litany recited by the State for Bexar County in the first round of this case.[31] Indeed, the record indicates that the total of Mexican Americans who had been successful candidates in county-wide races in El Paso County can be numbered on the fingers of two hands.

Finally, uncontested evidence offered by Dr. Cotrell who also testified in the first round of this case demonstrated voting patterns identical to those he observed in Bexar County. In each county, they break down along racial lines. (App. 598.)

Lubbock County

The post World War II plight of Mexican Americans in Lubbock County, Texas, was probably best stated in a standard reference book.

> . . . [A Mexican American was considered] not a human being at all, but a species of farm implement that comes mysteriously into being coincident with the maturing of the cotton, that requires no upkeep or special consideration during the period of its usefulness, needs no protection from the elements, and when the crop has been harvested,

[31]The testimony of Roy Barrera, a San Antonio resident and former Texas Secretary of State, indicated that Mexican Americans had been successful candidates for numerous school board positions; that they held the two downtown justice of the peace positions; that one of the judges of the county court-at-law was Mexican American; that the judge of the State's 175th District Court is a Mexican American; that the associate justice of the Fourth Circuit Court of Civil Appeals is a Mexican American; that one of the county's state senators was a Mexican American; that one of the county commissioners was a Mexican American; and that there had been numerous Mexican American city councilmen of whom three were incumbents at the time. (Wright Exhibit 4 at 727-731).

vanishes into the limbo of forgotten things—until next harvest season rolls around.

Kibbe, P., *Latin Americans in Texas,* (Albuquerque: University of New Mexico Press, 1946), p. 176. (A. Jur. S. 33A n. 17.)

The condition of Mexican Americans in Lubbock is today equally as deplorable as in 1944.[32] For example, the District Court found that less than one in ten Chicanos have finished high school. (A. Jur. S. 34A-35A.) Sixty percent of the Chicanos are dropouts before the 8th grade. *(Id.)* Fewer than 0.3% are college graduates. *(Id.)* Only eighteen Mexican American graduates of the Lubbock Independent School District have secured a college degree. (*Id.*)[33] Until

[32]That conditions have not changed, appears from the following excerpt from a document published only last year by Texas Tech University in Lubbock entitled "Managing Mexican Americans":

> The voluminous studies of minority groups provide sufficient evidence to develop a profile of the disadvantaged, and in particular of the Mexican American worker:
>
> 1. unemployed, underemployed, unable or unwilling to secure work; occupations generally of the menial, manual, unskilled, or semi-skilled type;
> 2. high crime rate, and participation in vices, as well as disregard for mores of dominant group;
> 3. lack of sufficient educational provision;
> 4. poor nutrition, high incidence of disease and injury, and generally indecent health standards;
> 5. living in substandard housing with over-crowded conditions and inadequate sanitation facilities; frequent moves from one poor house or apartment to another;
> 6. high birth rate and high mortality of offspring in infancy and childhood;
> 7. hopeless lack of self-determination accompanied by lowered motivation; generally discontented, rebellious, and demanding of social reforms.

(App. 2068A-2070.)

[33]Currently Mexican Americans comprise approximately one-fourth of the students in the Lubbock I.S.D. (App. 1809.)

recently, Mexican Americans made up the overwhelming majority of the Educationally Mentally Retarded (E.M.R.) classes, which is not surprising since very few of the teachers are able to speak Spanish and verbal testing in English was used to classify even Spanish dominant students. *(Id.)* (App. 1838-44.) The school nurse recently took the incredible position that Mexican Americans' brains are only about three-quarters the normal size due to malnutrition. (App. 1840-1844.) The rule against speaking Spanish on school grounds was enforced until 1968, and the director of bilingual education in the Lubbock I.S.D. speaks no Spanish. (A. Jur. S. 35A.)

It is not surprising that, in 1970, the Lubbock Independent School District was found guilty of *de jure* discrimination against both Mexican American and Black children which had resulted in racially identifiable schools. *United States v. Lubbock Ind. School Dist.*, 316 F. Supp. 1310 (N.D. Tex. 1970).

Further the District Court found that the county's minority population is highly ghettoized and that socially and economically Mexican Americans and Blacks in Lubbock are in the lowest income classes, inhabit the most delapidated housing and have the least mobility.[34] (See generally Moreno Ex. 41; A. Jur. S. 36A-37A.)

[34]The economic, educational and ethnic study of Lubbock County identified as Moreno Exhibit 41 demonstrates, for example, that the average value of owner occupied housing in the predominantly Mexican American census tracts was $6,766 as compared with $12,900 for the county as a whole; the average contract rental is almost $22 per month higher for the total county than for the Mexican American area; the median incomes are $3,500 per year

Politically, the District Court found the alienation of the Mexican American to be evident. (A. Jur. S. 36A-37A.) For example, only 12.1% of the Mexican Americans in the recent Baird [35] survey were able to identify the governor of the state (who then was a Lubbock resident) and only 7% could name one of their seven school board members. (Moreno Ex. 26 at 20.) Although over 50% of the Mexican Americans claimed interest in politics, only 16.8% had ever attended a political meeting and just over 14% had ever attempted verbally to influence another's vote. (*Id.* at 29; A. Jur. S. 37A.) Necessarily Baird concludes "that the level of political awareness [among Mexican Americans in Lubbock] is quite low." (Moreno Ex. 26 at 20.)

The relationship between Anglos and minority group members in Lubbock is equally shocking. The immediate past chairman of the Lubbock County Democratic Party, the State's only witness for Lubbock County, candidly admitted under cross examination and the District Court found that at least one-fourth of the Anglo voters would cast ballots against a Mexi-

higher in the Anglo areas of the city than in the Mexican American areas; over 28% of the families in the minority area were found below the poverty level; five times as many college graduates are found in the Anglo area as in the Mexican American area; only 16.11% of the persons residing in the Mexican American area have college degrees (as compared with 61.53% in the Anglo census tracts); and in excess of 10% of the population located in the Mexican American census tracts have never completed a year of school. (Moreno Ex. 41.)

[35]The Baird study is an ongoing series of research into the political and social attitudes of the people in Lubbock County. Moreno Ex. 20 is a paper delivered to the Rocky Mountain Political Science Association based on part of Baird's work.

can American candidate for the state legislature regardless of the qualifications of his Anglo opponent. (App. 2042; A. Jur. S. 37A.) Relying on as yet unpublished Baird studies, Dr. Cotrell was able to confirm this estimate and to add that half of the Anglo residents of Lubbock County still harbor stereotypes of Mexican Americans as lazy, emotional, enjoying low ambition and the like. (App. 562.) When a Mexican American gained the runoff in a recent race for the County Commission, her Anglo opponent pitched his campaign to make her appear a "militant." (App. 1820-1823.) Although the Chicana was defeated, the Commission immediately reapportioned itself, and split her voter support. (App. 578-579.)

The record is also replete with examples of Mexican Americans being refused service in public facilities as recently as last year; being denied admission to public swimming pools as recently as two years ago; and being prohibited access to motion picture theaters in the mid-1960's or, if admitted, being forced to sit in the balcony. (A. Jur. S. 35A-36A; App. 403; 1816-1818; 1889-1893; 1920-1936.) The State's only witness on Lubbock County testified that only six years ago it took litigation to secure burial for a Black lady in a Lubbock public cemetery. (App. 2056.) These things the District Court characterized as a "pattern of pervasive racial discrimination." (A. Jur. S. 36A.)

Although they comprise 23% of the total population of the county, the Mexican American and Black minorities have won only two elections in the history

of the county, electing a school board member in 1971 and a constable in 1968. (App. 2065.) No Mexican American or Black has ever even run for a county-wide post. *(Id.)*

When asked to explain the reason for this lack of minority impact, the immediate past chairman of the County Democratic Party said on cross examination:

> A. Well, I think ethnic origin is certainly one factor.
>
> Q. Okay. Would you say that is a substantial factor?
>
> A. Well, yeah, it is substantial.
>
> Q. Okay. Would you say the educational problems the Mexican Americans have faced in the county is one factor?
>
> A. Yes. The cost of the races.
>
> Q. And the cost of the races is another factor?
>
> A. Yes.

(App. 2065.)

In response to a request to compare the Lubbock minority population with that in Bexar County, Dr. Cotrell, who also testified as an expert in the first round of this case, stated:

> I don't think there is any kind of comparison here at all. The Lubbock County minority populations are as I have tried to describe in a traditional posture. That is, they are almost totally quiescent. There is apparently a great deal of hopelessness and despair, a great deal of alienation reflected in the attitude studies we talked about. There is very little hope as far as any kind of real participation rate and participation in politics.

(App. 568.)

Cotrell concluded, based on his study of the effects of the multi-member district on Lubbock County, that, "as a legal framework . . . [it] continues to discriminate against minorities in voting participation and continues to submerge, dilute and otherwise cancel their voting strength and effectiveness." (App. 569.)

The State's sole witness, the County Democratic Chairman, agreed under cross examination that the adoption of a single member district plan, such as the one adopted by the District Court which he was shown, would substantially reduce the impact of racial antipathy. (App. 2047.) In his own words: "There would probably be less discrimination in the district you have drawn there." (*Id.*)

The State does not attempt to meet the overwhelming evidence presented at trial. (App. Br. 40-43.) Rather they take the position that a division of the county into single member districts would not guarantee the election of a Mexican American or a Black. (*Id.* at 42.) But this is not the test. This Court has consistently held that minority groups have no right to a guaranteed seat in the legislature. See *White v. Regester,* 412 U.S. 755, 769 (1973). Rather their right is to have "an equal opportunity to participate in the political process. . . ." *White v. Regester, supra,* 412 U.S. at 765.

Galveston County

The Trial Court simply issued a declaratory judgment with respect to Galveston County, concluding that the peculiar districting of Galveston County constituted a racial gerrymander within the purview of *Gomillion v. Lightfoot,* 364 U.S. 339 (1960), a gerry-

mander that had the net effect of minimizing the voting strength of the Blacks of Galveston County.

The physical evidence, the map itself, demonstrates this conclusion. Thus, as testified by witness Harris, the redistricting scheme "includes a corridor . . . [that] runs straight to the heart of the county and takes out a census tract with about 5500 black people in it." (App. 239.) This essentially Black tract was then, for no apparent purpose, joined with essentially all white census tracts in adjoining Chambers and Harris Counties. (App. 240.)

The effect of this districting was described, without contradiction, as follows:

> It has diluted the [Blacks'] effect in the multi-member district of Galveston County. It has also diluted their effect in the district in which they were put. They were put in with a district of about 60,000 whites or 65,000 whites.

(App. 249.)

The purpose of this effort on the part of the Legislative Redistricting Board was described by Representative Harris as follows:

> It accomplished exactly what it was intended. The purpose of this plan was to dilute and water down or neutralize the effect of these black voters in order to influence the results of the Legislative race in Galveston County.

(App. 240.)

As noted by the Trial Court, the defendants made "no attempt to impeach [this] testimony or to offer

any evidence of their own suggesting some more permissible rationale for the district's composition." (A. Jur. S. 55A.) Under the circumstances, the Court's declaratory judgment was entirely proper.

II. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN ADOPTING AND IMPLEMENTING SINGLE-MEMBER DISTRICT PLANS FOR THE URBAN TEXAS COUNTIES AT ISSUE IN THIS CASE.

The Trial Court, having found within the terms of *White v. Regester,* 412 U.S. 755 (1973) and *Gomillion v. Lightfoot,* 364 U.S. 339 (1960), that state legislative multi-member districts were constitutionally impermissible in eight of Texas' nine remaining multi-member districts, properly sought to effectuate a remedy.[36] The State challenges this action on three grounds. The first two may be disposed of peremptorily.

Texas asserts first that "it was not at all clear that single-member districts would be an effective remedy." (App. Br. 55.) This is, of course, not the test to be employed in determining the propriety of a remedy. Rather the burden is upon the defendants to demonstrate an abuse of discretion. Having found that these multi-member districts denied to plaintiffs the Equal Protection of the Laws, it was well within the dis-

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[36]For the seven multi-member districts held to be unconstitutional under *White v. Regester,* 412 U.S. 755 (1973) the District Court adopted single-member district plans. For the Galveston County district, that Court chose to defer to the Legislature because any plan which the Court would adopt would require a wholesale "remodelling" of other districts. (A. Jur. S. 59A.)

cretion of the District Court, if not incumbent upon it, to provide an appropriate remedy. In this connection, it is noteworthy that no party in this case has suggested any remedy other than single-member districts. And the single-member district remedy was approved by this Court in the first round of the case when Dallas and Bexar Counties had been considered. The evidence in these proceedings clearly sustained the view that a similar remedy is appropriate in the counties under consideration. Further, in light of the decision in *Connor v. Johnson,* 409 U.S. 549 (1972), where the Court ruled that single-member districts are the preferred remedy when a constitutional violation has been proven, the case would have to be extreme indeed before a trial court's implementation of single-member apportionment, to remedy the unconstitutional effects of multi-member districts, could be held to be abuse of discretion.

The State's second argument is that the District Court should have stayed its hand pending the possibility of further legislative action. However, the Legislature has been in ~~both regular and special~~ session since this Court's decision in *White v. Regester,* 412 U.S. 755 (1973), and attempts to produce single-member apportionment bills have been singularly unsuccessful. (A. 296-97.) In fact, a special session of the Legislature was held after the most recent trial in this case but prior to this Court's order staying the implementation of the apportionment adopted by the Trial Court. No attempt was made in the Legislature to consider establishing single-member districts for the subject counties, even though one of the State's

witnesses had indicated that there was a substantial possibility that the Legislature would do so. (App. 1451.) Under the circumstances, there was no reason for the judiciary to defer to further legislative attempts at apportionment.[37]

The final point pressed by the State is equally without merit, for the single-member districts ordered by the Trial Court are clearly consistent with state policy and within the rationale of *White v. Weiser,* 412 U.S. 783 (1973), in that they do as little violence to the plan adopted by the State's Legislative Redistricting Board as possible.

The Texas Supreme Court enunciated the state policy on multi-member districts when it issued its mandamus to the Legislative Redistricting Board in *Mauzy v. Legislative Redistricting Board,* 471 S.W. 2d 570, 575 (Tex. Sup. 1971).

> In exercising its discretion as to whether to create multi-member districts within a single county, we must assume that the Board will give careful consideration to the question of whether or not the creation of any particular multi-member district would result in discrimination by

[37]No plan of apportionment adopted by the Legislature based upon the 1970 census has been held to be constitutional. E.g. *White v. Weiser,* 412 U.S. 783 (1973)—congressional apportionment; *Smith v. Craddick,* 471 S.W. 375 (Tex. Sup. 1971)—State House of Representatives apportionment. The Legislature was also unable to comply with its state constitutional mandate to reapportion the Senate. And the scheme of apportionment under consideration in this case was not the result of legislative action but was issued by a Board which came into existence only because the Legislature was not able to reapportion. Conceivably, when the Texas Legislature reconvenes in January of 1975, it could enact a constitutional plan reapportioning the multi-member districts at issue here.

> minimizing the voting strength of any political or racial elements of the voting population.

Thus, according to the Texas Supreme Court, multi-member districts offend state policy when they result in a "minimizing of the voting strength of any . . . racial elements of the voting population." Judged against this background of state policy, closely paralleling the equal protection requirement of the United States Constitution, the Trial Court properly dismantled the constitutionally impermissible multi-member districts now at issue.

The State seems to argue that the adoption of the plans by the District Court violates some undefined state policy.[38] This argument is equally unavailing. First, the State proposed no alternative approaches to reapportionment for Travis and El Paso Counties. Thus, the only plans before the District Court were those sponsored by the plaintiffs and presumably acquiesced in by the State. As to Nueces and McLennan Counties, the State joined the plans offered by the plaintiffs (App. 930, 971); thus for all practical purposes the District Court was able to adopt a remedy agreed upon by the parties. The only instances of conflict between the plans favored by the State

[38]Aside from the pronouncements by the Texas Supreme Court in *Mauzy*, 471 S.W. 2d at 575, the state policy regarding multi-member versus single-member legislative districts has never been entirely clear, and it apparently does not turn upon the size of the unit involved. Thus, for example, the original redistricting plan adopted by the Texas Legislature had carved McLennan County (one of the counties here at issue) into single-member districts. However, when the Legislative Redistricting Board undertook the task it created a two-member multi-member district in McLennan County.

and adopted by the District Court were in Jefferson, Lubbock and Tarrant Counties.[39] The State is in no position to quarrel with the District Court's action with respect to these counties. Although ordered on January 7, 1974 to tender proposed plans for the District Court's consideration by January 18, 1974 (App. Vol 1 at X), the State filed no plans by the deadline nor did it raise any objections to the plans which had been filed by the plaintiffs on January 14, 1974. It was not until the hearing on January 28 that the State for the first time tendered, for the Court's consideration, proposed plans for Jefferson and Lubbock Counties. (*Id.* at XV.)

By its dilatory action, the State insured that the Trial Court would have no opportunity to consider any plans it might propose in advance of the hearing. Texas now seeks to benefit by its own dereliction in urging that the Trial Court did not give ample consideration to the plans which it proposed for Lubbock and Jefferson Counties. If in fact the State's proposals did not receive ample attention from the Trial Court, the fault is wholly that of the State due to its failure to comply with the orders of the District Court.[40]

Further, to the extent that state policy has been expressed through the actions of the Legislative Re-

[39]We leave a discussion of the Tarrant County plan to the brief of the *Escalante* appellees.

[40]The Trial Court was well aware of Texas' contentions, for the State was allowed to and in fact did present both live testimony and argument in support of its plans. (App. 844-66; 877-81; 914-26; 951-61.)

districting Board, the plans implemented by the District Court were far more faithful to that policy than were the State's Lubbock and Jefferson Counties plans. While the schemes of apportionment advanced by the plaintiffs and adopted by the District Court simply carved the existing multi-member districts into appropriate single-member districts, the plans offered by the State would have necessitated the redrawing of adjoining single-member districts. (App. 895, 962-963.) These single-member districts were not then the subject of the litigation and had in fact been affirmed as constitutional in the Court's original opinion in this case. *White v. Regester,* 412 U.S. 755, 764 (1973). Thus, the plans adopted by the District Court for Lubbock and Jefferson Counties were more faithful to the established State policy than were the State's plans, in that the Court's plans did not disturb any legislative districts other than the two found to be unconstitutional.[41] Clearly, this was appropriate action on the District Court's part.

[41]In *White v. Weiser,* 412 U.S. 783 (1973), Texas argued to this Court that if an existing apportionment plan were found unconstitutional it was incumbent on the District Court to adopt a replacement plan which, as closely as constitutionally possible, approximated the stricken plan. *White v. Weiser, supra,* 412 U.S. at 794. This Court agreed, remanding *Weiser* for the adoption of such a plan. Yet here Texas argues that the District Court should adopt plans which would do more violence to the existing scheme than those in fact adopted by that Court.

III. THE APPEAL BROUGHT BY THE STATE OF TEXAS IS NOT PROPERLY BEFORE THIS COURT

A. This Court Lacks Jurisdiction Over the Appeal

The defendants claim that this Court's jurisdiction lies over the instant appeal pursuant to 28 U.S.C. §1253. This statute furnishes a jurisdictional basis for a direct appeal to this Court only when the action of the district court was "required by an act of congress to be heard and determined by a district court composed of three judges." Such a court is mandated only if there is a constitutional attack on a statute of statewide impact (or a federal statute) and an injunction is sought against the enforcement of the statute. 28 U.S.C. §2281; *Moody v. Flowers,* 387 U.S. 97 (1967); *Board of Regents v. New Left Educational Project,* 404 U.S. 541 (1972).

In the initial litigation resulting in this Court's judgment in *White v. Regester,* 412 U.S. 755 (1973), the State of Texas' *entire statewide scheme* of apportionment was attacked and an injunction against its use was sought and granted. *Graves v. Barnes,* 343 F.Supp. 704 (W.D. Tex. 1972), *aff'd in part rev'd in part sub nom. White v. Regester,* 412 U.S. 755 (1973). On appeal, this Court reversed the finding of the District Court that the state-wide scheme was constitutionally impermissible. *White v. Regester, supra,* 412 U.S. at 764. Thus the first round in this litigation was correctly before this Court.

The instant appeal is in quite a different posture. At the trial of the case on remand, there was no at-

tack on the statewide scheme of apportionment or even a statewide policy concerning the use of multi-member districts. Indeed, the claims of the plaintiffs were limited to specific allegations that multi-member districts operated unconstitutionally in the particular local milieu of seven of the state's 254 counties. Stated another way, only 3% of the state's counties (7 out of 254) and barely 16% of the membership of the state legislature (25 out of 150) were under consideration by the District Court.[42] In actuality, the instant case is composed of several different local suits which, for reasons of convenience and judicial economy, were consolidated and tried at one time. And only local issues calling for local relief are before this Court. The thousands of pages of evidence concern the specific effect which multi-member districts have on the individual locales. There was no holding by the District Court that all multi-member districts among the legislative districts are constitutionally impermissible in Texas. Indeed, two districts, located in Hidalgo and Galveston Counties, were conceded by the plaintiffs not to operate in an unconstitutional fashion under this Court's first decision in *White v. Regester,* 412 U.S. 755 (1973). (App. 590-91.)[43]

[42]An eighth county's (Galveston's) multi-member district was successfully challenged on the different theory of outright racial gerrymander. See *Gomillion v. Lightfoot,* 364 U.S. 339 (1960).

[43]Plaintiffs submitted that in Hidalgo County, located in the extreme part of south Texas along the Mexican border, use of multi-member districts did not dilute the votes of the Mexican American population. In that county, Mexican Americans account for in excess of 80% of the population and they account for more than half of the registered voters. Further, Mexican Americans have been historically successful in elections at all levels of government, and no racial appeals could be found in the electoral context. (App. 590-91.)

The Galveston County multi-member district was attacked on the ground that it was the result of an overt racial gerrymander which was designed to, and in fact did, split the Black community. Cf. *Gomillion v. Lightfoot,* 364 U.S. 339 (1960).

Where no statewide policy is attacked, none can be disrupted. Hence the instant appeal is highly analogous to the one dismissed in *Board of Regents v. New Left Educational Project,* 404 U.S. 541 (1972), where this Court found it lacked jurisdiction over an appeal in a case involving only 13% of Texas' four year colleges. Therefore this appeal should be dismissed.

B. The Instant Appeal Was Not Properly Docketed And Therefore Should Be Dismissed.

This Court's Rule 13 provides that in appeals pursuant to 28 U.S.C. §1253, an appellant must docket the appeal within sixty days after filing his notice of appeal. Docketing occurs when the appellant pays the docket fees and files forty copies of a Jurisdictional Statement printed in conformity with Rules 15 and 39. The only exception to the payment of docketing fees and the printing requirement is an appeal *in forma pauperis* pursuant to Rule 53.

The notice of appeal in this case was given on January 30, 1974, which made April 1, 1974, the final day for docketing. On that date the defendants failed to pay the docketing fees and attempted to file ten typewritten copies of their Jurisdictional Statement. No motion to extend time for filing was made prior

to the exhaustion of the sixty day docketing period. Likewise the defendants, officials of the State of Texas, have filed no motion to proceed *in forma pauperis*. However, on April 3, 1974, two days after the time had run, the defendants filed a motion requesting that this Court dispense with the requirement of printing for an unspecified period to allow them to have their Jurisdictional Statement printed. This, of course, was merely a motion to extend time. The printed copies of the Jurisdictional Statement were tendered to this Court on April 10, 1974. On April 8, 1974, plaintiffs had moved this Court to dismiss the defendants' appeal for failure to docket within the period provided by the rules. On April 29, 1974 the defendants filed a response and the plaintiffs filed a rejoinder to that response on April 30, 1974. This Court has not yet ruled on plaintiffs' Motion to Dismiss for Failure to Docket.

The motion of the defendants to extend time for the filing of their appeal was filed some two days after the expiration of its docketing period. This Court's Rule 34(2) provides clearly that such a motion must be presented to the clerk "within the period sought to be extended." The defendants claim that they telephonically requested such an extension from one of this Court's assistant clerks on March 26, 1974. (Response of Appellants to Motion to Dismiss at 2.) This date was within ten days from the end of the docketing period; consequently "extraordinary circumstances" must be shown pursuant to Rule 34(3). Yet the defendants have failed to offer any justification whatsoever. Not even in the response to plaintiffs' Motion to Dismiss for Failure to Docket did they attempt to explain the reason for their noncompliance with Rule 15.

Historically this Court has refused to entertain appeals which were not properly docketed within the time period provided by Rule 13 (1), especially where the appellants fail to offer any substantial excuse for such failure. For example, in *Pittsburgh Towing Company v. Mississippi Valley Barge Line Company,* 385 U.S. 32 (1966), this Court dismissed a direct appeal from a judgment of a district court where the appellant failed to docket within the time period provided by Rule 13(1). As the Court noted in dismissing the appeal:

> During that period [the 60 days allowed for docketing] appellant made no application for an enlargement of time, either to the District Court or to a Justice of this Court (see Rule 13 (1)) nor did any explanation accompany the untimely docketing of the appeal.

385 U.S. at 32.

Such late appeals have been dismissed even when the federal question presented is clearly substantial and the applicable time period for docketing was violated by only a very short period of time. In the closely analogous case of *Shapiro v. Doe,* 396 U.S. 488 (1970), this Court dismissed an appeal from an order

of a three-judge court enjoining the enforcement of a Connecticut State Welfare regulation because the State was two days late in docketing their appeal pursuant to Rule 13.

In *Snider v. All State Administrators, Inc.*, ... U.S. ....., 94 S.Ct. 771 (1974), this Court specifically commented on a situation similar to the instant one. Snider had filed a motion to dispense with printing of his Petition for Writ of Certiorari pursuant to Rule 39, but had not attempted to proceed *in forma pauperis* pursuant to Rule 53. As the Court noted, the printing requirement is clearly explained in the Rules and exists for important reasons. 94 S.Ct. at 772. Thus, even though the motion was filed prior to the expiration of the time for docketing, it was denied because there was no showing which would justify dispensing with the printing of the Petition for Writ of Certiorari.

In *Snider,* this Court chose to spare the individual litigant a dismissal for failure to file the printed Petition for Writ of Certiorari and allowed him a period of 21 days to correct his mistake. However, the Court was careful to warn that such generous treatment was given: "Because our view as to the probable failure of motions such as [this] may not have heretofore been apparent to the bar. . . ." 94 S.Ct. at 772. Other litigants such as the defendants in the instant case, who have been placed on notice by *Snider* and choose to ignore the Rules of this Court, should not be entitled to such an indulgence.

Snider was decided on January 21, 1974, and reported in Law Week on the next day. 42 U.S.L.W. 3419. It was published in the Supreme Court Reporter on February 15, 1974, and in the Lawyer's Edition on February 18, 1974. 94 S.Ct. 771, 39 L.Ed.2d 90. Thus the decision was available to the defendants a full week before they even filed their notice of appeal and for sixty-seven days prior to their expiration of their docketing period. The instant appeal, therefore, should be dismissed as untimely.

CONCLUSION

The questions presented by the defendants in the instant appeal are identical to those considered by this Court last term in *White v. Regester,* 412 U.S. 755 (1973). Both *White I* and the instant proceedings dealt with the effect of multi-member districts on the Mexican American and Negro population in Texas urban areas. Both cases were decided by a Trial Court composed of the same three judges. The opinion of the District Court in each case indicates that the same factors were considered in each case. As the decision of the Trial Court attests, the plaintiffs have presented "ample evidence to support findings that the political processes leading to nomination and election were not equally open," 412 U.S. at 770, to Mexican Americans and Negroes.

For the above reasons and those stated elsewhere in this brief and the other briefs submitted on behalf

of the plaintiffs, the defendants' appeal should be dismissed or, in the alternative, the judgment of the District Court should be affirmed.

Dated, October 12, 1974.

Respectfully submitted

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(Appendix "A" Follows)

Appendix "A"

Appendix "A"

Article III, Section 26, Apportionment of Members of House of Representatives

Sec. 26. The members of the House of Representatives shall be apportioned among the several counties, according to the number of population in each, as nearly as may be, on a ratio obtained by dividing the population of the State, as ascertained by the most recent United States census, by the number of members of which the House is composed; provided, that whenever a single county has sufficient population to be entitled to a Representative, such county shall be formed into a separate Representative District, and when two or more counties are required to make up the ratio of representation, such counties shall be contiguous to each other; and when any one county has more than sufficient population to be entitled to one or more Representatives, such Representative or Representatives shall be apportioned to such county, and for any surplus of population it may be joined in a Representative District with any other contiguous county or counties.

Article III, Section 28, Time for Apportionment; Apportionment by Legislative Redistricting Board

Sec. 28. The Legislature shall, at its first regular session after the publication of each United States decennial census, apportion the state into senatorial and representative districts, agreeable to the provisions of Sections 25, 26, and 26-a of this Article. In the event the Legislature shall at any such first regular session following the publication of a United States decennial

census, fail to make such apportionment, same shall be done by the Legislative Redistricting Board of Texas, which is hereby created, and shall be composed of five (5) members, as follows: The Lieutenant Governor, the Speaker of the House of Representatives, the Attorney General, the Comptroller of Public Accounts and the Commissioner of the General Land Office, a majority of whom shall constitute a quorum. Said Board shall assemble in the City of Austin within ninety (90) days after the final adjournment of such regular session. The Board shall, within sixty (60) days after assembling, apportion the state into senatorial and representative districts, or into senatorial or representative districts, as the failure of action of such Legislature may make necessary. Such apportionment shall be in writing and signed by three (3) or more of the members of the Board duly acknowledged as the act and deed of such Board, and when so executed and filed with the Secretary of State, shall have force and effect of law. Such apportionment shall become effective at the next succeeding statewide general election. The Supreme Court of Texas shall have jurisdiction to compel such Commission to perform its duties in accordance with the provisions of this section by writ of mandamus or other extraordinary writs conformable to the usages of law. The Legislature shall provide necessary funds for clerical and technical aid and for other expenses incidental to the work of the Board, and the Lieutenant Governor and the Speaker of the House of Representatives shall be entitled to receive per diem and travel expense during the Board's session in the

same manner and amount as they would receive while attending a special session of the Legislature. This amendment shall become effective January 1, 1951. As amended Nov. 2, 1948.